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Regionalising the Responsibility to Protect

Possibilities, Capabilities and Actualities

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R2P



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Regionalising the Responsibility to Protect

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Kristin M. Haugevik

Executive Summary

This report discusses what part regional organizations can and should play in ensuring implementation of the international Responsibility to Protect (R2P). What formal responsibility and which enabling capabilities do regional organizations have for assuming a role in protecting populations from mass atrocity crimes?

The report begins by discussing the formal role projected for regional organizations in the implementation of R2P, individually and vis-à-vis the UN, in the 2005 UN World Summit Outcome Document. The description of this role is then compared to the one depicted in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). The second part of the report offers an overview of relevant capabilities held by key regional organizations in Europe, Africa, the Americas and Asia, capabilities that could enable them to take part in protection tasks prior to, during or in the aftermath of mass atrocities. In the third and final part of the report, the capability aspect is seen in relation to the constitutive and constraining impact that individual member states' interests may have on the ability of regional organizations to act within the context of R2P.

The following three observations emerge:

First, the Outcome Document explicitly refers to regional organizations as prospective partners for the UN in the implementation of R2P, both by term and by reference to Chapter VIII of the UN Charter. While the Outcome Document considers regional organizations first and foremost as partners of or sub-contractors under UN in the context of R2P, the ICISS report opens up for the possibility that regional organizations might act without prior authorization from the Security Council in cases where the latter fails to take action.

The international community's failures to respond to atrocities in the past are in themselves evidence that the present UN system, including the role of the Security Council, is sub-optimal. However, opening the door for action by regional organizations without prior authorization from the Security Council would probably create more problems for R2P than it would resolve. Despite its deep-rooted institutional weaknesses, the UN is today the only proper international forum for extensive political dialogue and decision-making. Further consideration of alternative authorization structures *within* the UN system therefore

seems a more promising path than allowing for indistinct practices outside the UN system.

Second, it is problematic to treat the wide spectrum of different regional organizations under the same collective term when operationalizing the principle of R2P. If R2P is defined broadly – as it is in the Outcome Document – then practically all regional organizations today possess capabilities that in some way or another could enable them to take part in the implementation of R2P. In fact, however, regional organizations vary significantly in their actual abilities. This aspect needs to be recognized when further identifying and concretizing the role of regional organizations in relation to R2P.

Third, capabilities alone are no guarantee for effective action. A key factor that both constitutes and constrains regional organizations' potential to play a role in implementing R2P is the willingness (collective or individual) of their member states to do so. In many cases, regional organizations are prevented from taking on protection tasks due to ineffective decision-making procedures or powerful member states that block action on grounds of national concerns. Conversely, some states might be tempted to use R2P as a pretext or cover for taking action in pursuit of their own national agendas. Such practices are difficult to prevent, but are highly unfortunate for the further operationalization of R2P.

Introduction

Ever since the Responsibility to Protect principle (R2P) was brought into the international debate with the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS), regional organizations have been at the centre of the discussion on how R2P can most effectively be transformed from principle to practice. The two paragraphs on R2P in the 2005 United Nations World Summit Outcome Document, which amount to the internationally endorsed version of the principle, refer to regional organizations both by term and by reference to Chapter VIII of the UN Charter. Furthermore, in recent international crises where R2P has been invoked, the presence of regional organizations such as the European Union (EU) and the African Union (AU) has been requested either in support of or instead of that of the UN.¹

This report considers what role regional organizations can and should play in implementing the R2P principle. Addressing a set of basic issues concerning regional organizations' formal responsibility and actual ability to take on protection tasks, the report aims to contribute to the further operationalization of R2P. The report begins by discussing the role projected for regional organizations, individually and vis-à-vis the UN, in the Outcome Document. The description of this role is then compared with the one depicted in the advisory ICISS report.² The second part of the report offers an overview of relevant capabilities held by key regional organizations in Europe, Africa, the Americas and Asia, capabilities that could enable them to take part in protection tasks prior to, during or in the aftermath of mass atrocities. In the third and final part of the report, the capability aspect is seen in relation to the constitutive and constraining impact that the interests of individual member states may have on regional organizations' ability to act in response to an R2P situation.

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¹ The government of Sudan initially refused to allow the presence of UN troops to stabilize the situation in Darfur in 2006, leaving the AU as the only external military force in the region until the hybrid UN–AU operation UNAMID was established in 2007. Moreover, in the autumn of 2008, the international community called on the EU to take action in response to the atrocities in the Democratic Republic of Congo.

² Although some of its most controversial ideas have been modified or rejected through the political process leading up to the World Summit decisions, the ICISS report, with its rich discussion, still provides valuable input to the discussion of the further operationalization of R2P

A regional responsibility to protect?

The increasing demand for involving regional organizations in the implementation of R2P must be seen as part of a larger picture. Ever since its formation in 1945, the UN has been open to the idea of sharing the overall responsibility for upholding international peace and security with regional arrangements or agencies. As Chapter VIII of the UN Charter clearly states:

[n]othing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.³

Furthermore, the Charter specifies that regional arrangements and their member states should ‘make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies *before* referring them to the Security Council’.⁴ In other words, the potential of regional organizations to complement the efforts of the UN was acknowledged more than sixty years ago. However, it was not until after the end of the Cold War that regional organizations became a hot topic in the continuing debate about how to best maintain international peace and security. In 1993, then UN Secretary-General Boutros Boutros-Ghali observed that ‘regional action as a matter of decentralization, delegation and cooperation with the United Nations effort’ could help ease some of the burden on the world organization.⁵ This statement has later been referred to as the birth of the concept of a ‘regional–global security partnership’.⁶ In the mid-1990s, with the UN’s failure to put an end to the atrocities in Rwanda and Bosnia, came the general recognition that international responses to crisis situations would have to be more timely and efficient, as well as more comprehensive and better coordinated. These insights, together with increasing demands for the UN’s presence in conflicts around the world, arguably created a greater scope for regional organizations to become involved in international crisis management more generally, and in the implementation of R2P more specifically. Since the 1990s, many UN reports and documents have emphasized the importance of strengthening the cooperation between the UN and regional

³ United Nations (1945), *Charter of the United Nations*, New York: United Nations, Chapter VIII, article 52.

⁴ *Ibid.* (emphasis added).

⁵ United Nations General Assembly (1992), ‘An Agenda for Peace. Preventive Diplomacy, peacemaking and peacekeeping’, *Report of the Secretary-General*, No. A/47/277 – S/24111. New York: United Nations. 17 June.

⁶ United Nations Security Council (2007), ‘The UN and Regional Organizations’, *Update Report*, No. 3, New York: United Nations, 23 March.

organizations on security issues. On the ground, the UN has already collaborated with various regional organizations in several missions aimed at preventing conflict, terminating conflict, or restoring societies in the aftermath of conflict. The many examples include the cooperation between the UN and NATO in the Balkans in the 1990s, the EU's military operations in support of the UN operation in the Democratic Republic of the Congo in 2003 and 2006, and the ongoing (since 2007) hybrid UN–AU mission in the Sudan.

In 2001, the report of the International Commission on Intervention and State Sovereignty (ICISS) advised that when national authorities fail to fulfil their duty to protect their populations from mass atrocities, the ultimate responsibility to protect must instead lie with the broader international community.⁷ In addition to the UN, this responsibility was in subsequent sections specified to cover also 'international, regional and non-governmental mechanisms'.⁸ This view has been backed up in the 2005 UN World Summit Outcome Document, which contains the internationally endorsed version of R2P. Paragraph 139 refers explicitly to 'relevant regional organizations' as prospective partners for the UN in implementing the R2P principle.⁹

While the Outcome Document and the more radical ICISS report agree that regional organizations should take part in the implementation of the R2P principle, they are less in accord when it comes to what role regional organizations should play toward the UN in this regard. The Outcome Document asserts that measures taken to protect populations from mass atrocities should be organized through the UN or take place under UN supervision. Not least, the UN should, as a general rule, always have the final say when it comes to authorizing the use of military force:

The international community, *through* the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means [to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity] in accordance with Chapters VII and VIII of the Charter.¹⁰

⁷ International Commission on Intervention and State Sovereignty (ICISS) (2001), 'The Responsibility to Protect', Ottawa: ICISS, paras. 3.2–3.3. Available at <http://www.responsibilitytoprotect.org/>

⁸ *Ibid.*, para. 3.6, see also 6.31.

⁹ United Nations General Assembly (2005), 'UN World Summit Outcome Document', No. A/RES/60/1. New York: UN, paras 138–139.

¹⁰ UN General Assembly, 'UN World Summit Outcome Document' (emphasis added).

The Outcome Document thus reconfirms what is set out in the UN Charter: that any use of force should always be authorized by the Security Council; furthermore, that the Security Council should be kept fully informed about actions taken by regional arrangements and agencies for the purpose of upholding international peace and security.¹¹

In view of this, Thomas G. Weiss observes, the Outcome Document can be said to propose an 'R2P lite' – a watered-down version of the principle compared to how it was originally sketched out in the advisory ICISS report.¹² Unlike the Outcome Document, the ICISS report recognizes that there have been situations in the past, as there will be in the future, where the UN 'rejects a proposal or fails to deal with it in a reasonable time'. In such situations, the report notes, some leeway will often be needed. As a result, it opens up for the possibility of the Security Council authorizing action by regional organizations under Chapter VIII *ex post facto* rather than prior to intervention.¹³ This is far from an unproblematic modification, as it basically indicates that in some situations Chapter VIII may prevail over Chapter VII. An illustrative case in point as to when such a reversed order could have been invoked is NATO's air campaign in Kosovo in 1999, which was carried out without prior authorization from the Security Council.¹⁴

The Outcome Document and the ICISS report thus propose alternative models as regards the relative strength between the UN and regional organizations concerning R2P. Today's practice, which is essentially identical to the model outlined in the Outcome Document, is that regional organizations in the context of R2P are seen merely as sub-contractors under the UN, with no responsibility to protect of their own. From this perspective, regional organizations should await authorization from the Security Council before intervening militarily in the internal affairs of a state. The ICISS report, in contrast, suggests that regional organizations should perhaps have a responsibility to protect that exists independently of that of the UN, notably when the

¹¹ UN, *Charter of the United Nations*, chapter VIII, article 54.

¹² Thomas G. Weiss (2006), 'R2P after 0/11 and the World Summit', *Wisconsin International Law Journal*, vol. 24, no. 3, p. 750.

¹³ ICISS, 'The Responsibility to Protect', article 6.35.

¹⁴ A second possibility suggested by the ICISS report is to allow for a greater role for the UN General Assembly in authorizing the use of force, under the so-called 'Uniting for Peace procedures'. Such a course of action could potentially provide legitimacy for military intervention, but would not be optimal vis-à-vis the UN, nor would it be realistic at the current stage. See 'The Responsibility to Protect', paras. 6.29–6.30. For a thorough discussion of the authorization issue, including the potential role of regional organizations, see Nicholas J. Wheeler (2008), 'Operationalising the Responsibility to Protect: The Continuing Debate over where Authority should be Located for the Use of Force', *NUPI Report Responsibility to Protect*, No. 3, 2008.

Security Council fails to respond to atrocities within a reasonable time.

The international community's failures to take action in response to atrocities like those in Bosnia, Rwanda and Darfur are in themselves forceful arguments as to why the UN system, including the Security Council, is heavily in need of reform. At this point, however, opening the door for action to be taken by regional organizations without the prior authorization of the Security Council would be likely to create more problems for R2P than it resolved. Despite its deep-rooted institutional weaknesses, the UN remains the only proper forum for extensive international political dialogue and decision-making. Allowing for diverging practices would in all probability mean the end of the Council's role as the primary guardian of international peace and security.

Thus it is not surprising that the Outcome Document leaves regional organizations with only a conditional responsibility to protect. Somewhat more surprising is it, however, that the term 'regional organizations' is not concretized any further. To paraphrase George Orwell, it is evident that some regional organizations are more equal than others – so it makes little sense to treat them as a homogeneous group in this context. Unfortunately, the Outcome Document does not distinguish between the innumerable entities that may be subsumed the general heading 'regional organizations'. This lack of precision makes it difficult to operationalize and concretize the role of regional organizations in the implementation of R2P further, since such organizations vary so greatly in their *de facto* potential.

Regional organizations' capability to protect

With its threefold division of protection tasks, the ICISS report implicitly defines an 'R2P situation' as one where mass atrocity crimes are either about to emerge, are currently taking place or have recently occurred.¹⁵ Albeit in a less schematic way, this definition is largely echoed in the Outcome Document. Here, the implementation of R2P is operationalized as the application of 'appropriate diplomatic, humanitarian and other peaceful means', including providing assistance to states 'before crises and conflicts break out'.¹⁶ Thus, while controversies relating to military intervention tend to be at the centre of the international debate on R2P, as a concept R2P is in fact just as much, if not more, about preventing mass atrocities and rebuilding societies in the aftermath of such crimes.

¹⁵ 'Responsibility to Protect', ch. 3-5.

¹⁶ United Nations General Assembly (2005), 'UN World Summit Outcome Document', New York: UN, article 138.

If we accept this broad definition of what an R2P scenario might entail, then a wide range of different capabilities must also be considered relevant for the implementation of the norm. This is, at least, the argument of Gareth Evans, who suggests a categorization into three 'toolboxes' that can be used in response to emerging, ongoing or recently resolved R2P situations.¹⁷ These three categories, which he labels the *prevention* toolbox, the *reaction* toolbox and the *rebuilding* toolbox, are further divided into four thematic sub-categories: political and diplomatic tools; economic and social tools; constitutional and legal tools and security sector tools. These four may, in turn, be of either a structural or a direct nature.

The *prevention toolbox* is the largest of the three, as it contains a wide range of means within all the four thematic sub-categories. They include both structural means like the 'promotion of good governance', 'promotion of membership in international organizations' and 'support of economic development', as well as direct means like 'preventive diplomacy', 'threat of political or economic sanctions', 'economic incentives' and 'end of military cooperation programs'. The *reaction toolbox* is more limited in scope, and encompasses only direct measures. These vary from 'diplomatic peacemaking' and 'political and economic sanctions and incentives' to 'peacekeeping for civilian protection' and 'threat or use of military force'. Finally, the *rebuilding toolbox* includes only structural means, some of which are identical to those found in the prevention toolbox. Examples of rebuilding tools include 'reconstruction of governance institutions', 'peacekeeping in support of nation building; disarmament; demobilization and reintegration' and 'security sector reform'.¹⁸ The content of these three toolboxes is summarized in Table 1.

¹⁷ Gareth Evans (2008), *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All*. Washington DC: Brookings Institution Press, chapters 4, 5 and 7.

¹⁸ Ibid.

Table 1: The R2P toolbox¹⁹

		Prevention	Reaction	Rebuilding
Political and diplomatic tools	Structural	<ul style="list-style-type: none"> promote good governance promote membership in international organizations 		<ul style="list-style-type: none"> rebuilding governance institutions maximizing local ownership
	Direct	<ul style="list-style-type: none"> preventive diplomacy threat of political sanctions 	<ul style="list-style-type: none"> diplomatic peacemaking political sanctions and incentives 	
Economic and social tools	Structural	<ul style="list-style-type: none"> support economic development support education for tolerance community peace building 		<ul style="list-style-type: none"> support economic development social programs for sustainable peace
	Direct	<ul style="list-style-type: none"> aid conditionality threat of economic sanctions economic incentives 	<ul style="list-style-type: none"> application of economic sanctions economic incentives 	
Constitutional and legal tools	Structural	<ul style="list-style-type: none"> promote fair constitutional structures promote human rights promote rule of law fight corruption 		<ul style="list-style-type: none"> rebuilding criminal justice managing transitional justice supporting traditional justice managing refugee returns
	Direct	<ul style="list-style-type: none"> legal dispute resolution threat of international criminal prosecution 	<ul style="list-style-type: none"> criminal prosecution 	
Security sector tools	Structural	<ul style="list-style-type: none"> security sector reform military to civilian governance confidence-building measures small arms and light weapons control 		<ul style="list-style-type: none"> peacekeeping in support of nation building disarmament demobilization reintegration security sector reform
	Direct	<ul style="list-style-type: none"> preventive deployment non-territorial show of force threat of arms embargo end of military cooperation programs 	<ul style="list-style-type: none"> peacekeeping for civilian protection safe-haven and no-fly zones arms embargoes jamming of radio frequencies threat or use of military force 	

¹⁹ Here three tables are merged, originally presented on pages 87, 107 and 150 in Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All*.

Accepting this wide spectrum of potentially relevant R2P tools, it can be argued that most regional organizations today possess capabilities that in some way or another enable them to take part in the implementation of R2P. The following sub-sections exemplify this by presenting the capabilities of six specific regional organizations in Europe, Africa, the Americas and Asia. Starting with the three organizations based in Europe – NATO, the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE) – the overview continues with the African Union (AU) and the Association of South-East Asian Nations (ASEAN), before ending with the Organization of American States (OAS).

The North Atlantic Treaty Organization (NATO)

NATO specializes in what, with reference to Table 1, can be referred to as direct reaction tools within the security sector category. Originally, NATO was a pure military defence alliance, founded after the Second World War for the purpose of protecting European countries from the perceived military threat from the Soviet Union.²⁰ More recently, with the end of the Cold War, NATO has gradually acquired a new role in international security politics. While collective defence continues to be NATO's main preoccupation, the alliance is today also 'ready, on a case-by-case basis and by consensus, to contribute to effective conflict prevention and to engage actively in crisis management, including through non-Article 5 crisis response operations' – also outside its original working radius.²¹ Illustratively, NATO's largest ongoing military operation is being carried out in Afghanistan under a UN mandate. Furthermore, the alliance has recently assisted African troops in Sudan and Somalia with air transport. In addition to increasingly taking on such tasks 'out of area', NATO is also working to achieve a more 'comprehensive approach' to crisis management. The concept was formally launched at NATO's top summit in Riga in 2006,²² and reflects NATO's aim to put more emphasis on the coordination of military and civilian efforts, including through collaboration with other actors.

NATO's large-scale air campaign to end the Kosovo war in 1999, a campaign carried out without formal Security Council authorization, demonstrated that NATO has both the political will and necessary tools to take action for the purpose of upholding regional stability and security. However, NATO's actions in Kosovo also illustrated what the then UN Secretary-General Kofi Annan referred to as 'the dil-

²⁰ NATO currently consists of 26 member states, including several former East Bloc nations.

²¹ NATO (2006), 'Comprehensive Political Guidance', Brussels: NATO.

²² Ibid.

emma of humanitarian intervention'.²³ On the one hand, the air campaign could be seen – and was by many – as a violation of international law, since the actions were not authorized by the Security Council. On the other hand, others viewed the events in Kosovo as a case in point as to how regional organizations might act when the UN fails to fulfil its primary responsibility of 'effectively halting gross and systematic violations of human rights with grave humanitarian consequences'.²⁴

The European Union (EU)

Founded in 1957 as an economic community between six European countries, the EU has today developed into a complex political union consisting of 27 member states. Since the late 1990s, the EU has also become an increasingly important actor in international security politics. While the EU remains a 'military dwarf', at least if compared with NATO or the United States, Jolyon Howorth reminds us that it would be unfair to evaluate the EU's security and defence policy solely with reference to military capabilities.²⁵ In fact, it could well be argued that the EU possesses the *widest* range of crisis management tools of all regional organizations in the world today. The EU toolbox encompasses both military and civilian instruments, intended to address a wide range of security challenges, including

[...] humanitarian and rescue tasks, peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking. [...] [T]his might also include joint disarmament operations, the support for third countries in combating terrorism and security sector reform.²⁶

A large share of the EU's crisis management tools are designed for the prevention of conflict or the reconstruction of a society post-conflict. Since 2003, the EU has carried out several missions with such objectives, including police missions and assistance missions related to security sector reform, border control, rule of law and monitoring. Moreover, the EU has in relatively few years also acquired capabilities to be applied in crisis management, including military reaction tools. With the *Berlin Plus* agreement of 2002, the EU was given access to NATO's military resources in operations where NATO as a

²³ Kofi Annan (2000), "'We the Peoples": The role of the United Nations in the 21st Century', *Report of the Secretary-General*, New York: United Nations, p. 48.

²⁴ Ibid.

²⁵ Jolyon Howorth (2007), *Security and Defence in the European Union*, Houndmills, Basingstoke: Palgrave Macmillan, p. 93.

²⁶ European Council (2004), 'Headline Goal 2010', Helsinki. 17–18 June.

whole does not wish to act.²⁷ Parallel to this, the EU has developed military capabilities of its own. In 2004, it launched the concept of 'rapid reaction battlegroups', largely modelled on the EU's first autonomous military operation in the Democratic Republic of Congo in 2003.²⁸ Briefly put: such battlegroups are military forces consisting of some 1500 personnel, capable of rapid deployment within 10 days, and sustainable for a maximum of 120 days. The battlegroups reached full operational capability in January 2007 and are intended to be used in various types of small-scale EU missions within the framework of the European Security and Defence Policy (ESDP). According to former UN Secretary-General Annan, they represent one area where the EU is better equipped than the UN to take action:

The EU is in a position to provide specialized skills that our largest troop contributors may not be able to give us, and to deploy more rapidly than we can. Many people are alive today because of the French-led Operation Artemis in the Democratic Republic of Congo, which in turn was handed over to a UN operation.²⁹

At the same time, Annan was careful to stress that a strengthening of the EU's military powers should not take place at the expense of EU member states' contribution of troops to UN peacekeeping missions.³⁰

The Organization for Security and Cooperation in Europe (OSCE)

The OSCE's potential within an R2P context lies within the areas of conflict prevention as well as crisis management and post-conflict reconstruction. Its means are political and diplomatic rather than military.³¹ The origins of the organization can be directly traced back to the Conference on Security and Co-operation in Europe (CSCE) between 1973 and 1975, during which 35 states agreed to cooperate on various security matters 'outside military alliances'. In 1994, following a heads of state summit in Budapest, the various conference outcomes were institutionalized into today's OSCE. Encompassing 56 member states from Europe, Central Asia, the Caucasus and North America, the OSCE is currently the world's largest regional organiza-

²⁷ European Union and NATO, *European Union – NATO Declaration on ESDP*, Brussels, 16 December 2002. This agreement has so far been effectuated in twice, in Macedonia (2003) and Bosnia-Herzegovina (since 2004).

²⁸ This operation, dubbed *Artemis*, took place in support of the UN mission (MONUC) in Bunia, and was led by France.

²⁹ Kofi Annan (2004), 'Address by Secretary-General Kofi Annan to the National Forum on Europe', speech, Dublin, 14 October. Available at <http://www.forumoneurope.ie/index.asp?locID=366&docID=566>.

³⁰ *Ibid.*

³¹ Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All*, pp. 193–194.

tion – although it should, of course, be noted that the organization encompasses countries from more than one region.

The Helsinki Final Act of 1975 introduced three dimensions along which the CSCE was to concentrate its work: the politico-military dimension, the economic–environmental dimension, and the human dimension.³² These have later been echoed in the official documents on which the OSCE is founded, including the 1990 *Charter of Paris*. Specific tools for addressing challenges within these three areas include arms control, preventive diplomacy, the establishment of shared standards for human rights, democracy and elections, and police work. Currently, the OSCE is conducting a wide range of missions in South-Eastern Europe, Eastern Europe, the Caucasus and Central Asia, involving some 3,000 personnel in the field. Overall, the achievements of the OSCE’s diverse field missions must be described as varied. While some operations have been assessed very favourably, others have been criticized for not having fulfilled their initial objectives.³³ There are in particular two recurrent challenges that the OSCE has had to face in its peace and security role. One has to do with the OSCE’s decision-making procedures, which often are ineffective due to the organization’s requirement of consensus. With 56 member states, among them four of the permanent members of the Security Council (France, the Russian Federation, the UK and the USA), it is hardly unexpected that national interests sometimes get in the way of decision-making within the OSCE. The other challenge, which must be seen in relation to the first, has to do with insufficient and vague mission mandates, which in many cases have hindered effective management of OSCE missions.³⁴ As a result, as Gareth Evans recently observed, the OSCE ‘has been rather marginalized, and seems to have been punching below its potential weight’.³⁵ Evans believes, however, that the OSCE has a unique potential to play a role, especially in Asia, due to its ‘historical roots in the region, inclusiveness and multi-dimensional remit’.³⁶

The African Union (AU)

In recent years, various regional and sub-regional arrangements have emerged in the African region, many of which are driven by an

³² OSCE (1975), *The Helsinki Final Act*, Helsinki: OSCE.

³³ Patricia Taft and Jason Ladnier (2006), ‘Realizing never again. Regional capacities to protect civilians in violent conflicts’, Report, Washington DC: The Fund for Peace, January, pp. 37–28.

³⁴ Ibid.

³⁵ Gareth Evans (2008), ‘The OSCE in the contemporary world: The security dimension’, *Keynote address*, Parliamentary Assembly, Toronto, 18 September, p. 9.

³⁶ Ibid.

underlying rationale of contributing to peace and security on the continent. Of these, the African Union (AU) represents the most ambitious project thus far.³⁷ The AU was established in 2002, and all African countries except Morocco are currently members (altogether 53). The organization is modelled partly on the institutional structures and aims of the UN, and partly on those of the EU. One of its central objectives is to secure peace and stability on the African continent, and to do so more efficiently than its predecessor, the relatively toothless Organization of African Unity (OAU). So far, the AU has focused on prevention and reaction tasks, despite limited resources. The organization has intervened, with both military and non-military means, in conflicts in Burundi, Somalia, the Ivory Coast, the DRC, the Sudan and the Comoros. The development of an African Standby Force, to be effective from 2010, is a key priority for the AU. The force is intended to consist of both a military and civilian component, and is to be deployed in crises on the African continent.

In its Constitutive Act of 2000, the AU discarded the OAU principle of non-interference in the internal affairs of states ‘pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity’.³⁸ The inclusion of this sentence makes the AU the first regional organization to formally address the limitations of international law, by indicating that human security should rank above states’ absolute right to sovereignty. Adopted one year after the ICISS report was issued, the text has clear connotations of R2P. While the AU’s formal commitment to protect populations from mass atrocities has yet to be tested out in practice, it nevertheless represents a milestone as regards regional organizations and their commitment to the R2P principle.

The Association of Southeast Asian Nations (ASEAN)

ASEAN was established by five countries in Southeast Asia in 1967 for the purpose of promoting ‘economic growth, social progress and cultural development in the region’.³⁹ Today, the organization comprises ten member states,⁴⁰ and has started to focus on a second aim:

³⁷ Also sub-regional organizations in Africa such as the Economic Community of West African State (ECOWAS), the Southern African Development Community (SADC) and the Intergovernmental Authority on Development (IGAD) have capabilities that potentially enable them play a role in the implementation of R2P. Since the focus here is strictly on the regional level, these will not be discussed here.

³⁸ African Union (2000), *Constitutive Act of the African Union*, Article 4 (h). Addis Ababa: African Union.

³⁹ ASEAN (1967), *Bangkok Declaration*, 8 August.

⁴⁰ Brunei, Burma/Myanmar, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam

to advance ‘regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter’.⁴¹

In 2003, the ASEAN member states agreed to establish an ASEAN Community consisting of three pillars: the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community. The purpose of the ASEAN Security Community is to ‘ensure that countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment’.⁴² However, ASEAN’s approach to such matters has so far been constrained by three core principles: the principle of non-interference, the principle of non-use of force, and the principle of consensus-based decisions.⁴³ In practice, this means that ASEAN’s potential in promoting the R2P lies first and foremost within the areas of prevention and rebuilding – crises are to be met with peaceful means such as ‘norms-setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building’.⁴⁴ However, a recent report issued by the *Asia-Pacific Centre for the Responsibility to Protect and Act for Peace* argues that there are signs of shifts in this traditional approach. These shifts are observable in both words and deeds, including in ASEAN’s increased focus on ‘people’ in its legal documents, and its active response to the cyclone in Myanmar in 2008.⁴⁵ Furthermore, in a 2006 report, Noel M. Morada indicates that improved democratic space in the Asian region could give advocates of the R2P norm greater room for manoeuvre.⁴⁶

The Organization of American States (OAS)

Founded in 1948, the OAS is the world’s oldest regional organization. All the independent states of the Americas, altogether 35, are members.⁴⁷ The organization’s original aim is, according to Article 1

⁴¹ ASEAN, *Bangkok Declaration*.

⁴² ASEAN (2003), *Declaration of ASEAN Concord II (Bali Concord II)*, 7 October.

⁴³ Asia-Pacific Centre for the Responsibility to Protect and Act for Peace (2008), ‘Inquiry into Australia’s Relationship with ASEAN’. Joint Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 29 August, p. 6.

⁴⁴ ASEAN, *Declaration of ASEAN Concord II (Bali Concord II)*.

⁴⁵ Asia-Pacific Centre for the Responsibility to Protect and Act for Peace, ‘Inquiry into Australia’s Relationship with ASEAN’, p. 6. The natural disaster in Myanmar does not qualify as ‘an R2P situation’, since it cannot be classified under one of the four headings identified by the Outcome Document: namely genocide, war crimes, ethnic cleansing and crimes against humanity. These four are all crises caused by human action.

⁴⁶ Noel M. Morada (2006), ‘R2P Roadmap in Southeast Asia: Challenges and Prospects’, *UNISCI Discussion Papers* 11, May.

⁴⁷ Cuba has, however, been suspended from participation since 1962.

of its founding Charter, ‘to achieve an order of peace and justice’, to encourage solidarity and cooperation between the member states, and ‘to defend their sovereignty, [...] territorial integrity, and [...] independence’.⁴⁸ Its ability to protect populations seems to lie mainly within the areas of prevention and rebuilding, although examples of ‘reaction’ tools can also be found in its toolbox. At present, however, any collective action under the name of OAS depends on contributions from the member states.⁴⁹ While the OAS has arguably expanded its security role in recent years,⁵⁰ its current charter does not address the challenge of responding to mass atrocity crimes within the region. The organization is also faced with several institutional challenges as regards playing a role in the context of R2P. Above all, the principle of non-interference in the internal affairs of member states is explicitly anchored in article 19 of the founding Charter. In practice, this means that states’ territorial rights are ranked above the individual rights of their citizens. Furthermore, the OAS requires consensus amongst its member states in order to take action, thereby permitting member states to look after their own national interests.

Beyond the issue of capabilities

The preceding sub-sections have shown that NATO, the EU, the OSCE, the AU, ASEAN and the OAS all possess capabilities that, if one applies a broad definition of R2P, at some level could enable them to play a role in the implementation of the principle. That being said, these six regional organizations’ potential to contribute in the context of R2P undoubtedly varies considerably. The EU, for instance, possesses a broad range of possible protection tools in its operational toolboxes, backed up by the necessary economic assets. NATO and the OSCE have specialized in reaction and prevention / reconstruction tools respectively, and have long-term experience in applying them. The AU is rapidly becoming a serious security actor in Africa, but currently lacks the resources needed to carry out extensive operations without external support. Finally, ASEAN and the OAS both possess tools that could enable them to assist in the structural prevention of or reconstruction after atrocities. So far, however, they have not taken on such a role. Indeed, these essential differences among the various regional organizations inevitably give rise to the question as to

⁴⁸ OAS (1948), *Charter of the Organization of American States*, 5 May. Amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.

⁴⁹ Taft and Ladnier, ‘Realizing never again. Regional capacities to protect civilians in violent conflicts’, p. 23.

⁵⁰ Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All*, p.181.

whether it is at all fruitful to deal with them under the same collective term in this context.

In addition to the need to differentiate among the various regional organizations, it is important to keep in mind that capabilities alone are no guarantee for action. A basic premise for whether regional organizations can take part in the implementation of R2P is their member states' collective or individual willingness to do so. Possessing capabilities is of little use if the readiness to use them is lacking. As Alex Bellamy points out, preventing future Rwandas is all about convincing states 'to assume responsibility for the protection of imperilled peoples'.⁵¹ Far from all member states of regional organizations have declared an interest in actively taking on such tasks. For instance, key members of the OAS have expressed reluctance as regards developing peacekeeping capabilities within the organization.⁵² Moreover, both OAS and ASEAN adhere to the principle of non-interference in states' internal affairs. In addition, decision-making in many regional organizations is consensus-based, meaning that they cannot take action unless all member states have given their consent. The OSCE, ASEAN and the OAS all follow consensus-based decision-making procedures as their standard practice, thus allowing individual member states to block collective action if this is seen as conflicting with their national interests.⁵³

At the other end of the scale, action taken in 'the name of R2P' can also be conveniently compatible with national agendas and interests. Regional organizations can be valuable actors in the context of R2P precisely because they often have a self-interest in securing peace and stability in their own region, and are consequently more likely to feel an obligation to resolve the situation than 'outsiders'. The sensitivity of regional organizations to conflicting issues and contextual factors in their own region, as well as their familiarity with the conflicting parties, arguably makes them better suited to take on protection tasks. Still, if regional organizations or their member states are seen to use R2P as a pretext or cover for their own interests, then this may over time deprive the principle of its value.⁵⁴ If regional organizations are

⁵¹ Alex J. Bellamy (2006), 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Ethics and International Affairs*, vol. 20, no. 2, p. 145.

⁵² Stanley Foundation (2008), 'Actualizing the Responsibility to Protect'. Conference report from the 43rd Conference on the United Nations of the Next Decade. Évora, Portugal 20–25 June, p. 36.

⁵³ Maria Banda (2007), 'The Responsibility to Protect: Moving the Agenda Forward', paper, United Nations Association in Canada, p. 19.

⁵⁴ Alex J. Bellamy (2005), 'A responsibility to protect or a Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq', *Ethics and International Affairs*, vol. 19, no. 2, p. 32.

to be considered 'rightful' guardians of R2P, they must take care not to come across as mouthpieces for the interests of individual member states. This is particularly important when regional organizations take action in areas outside their own region. Here it may be noted that certain critics have described the EU and NATO's involvement in Africa as a new form of Western imperialism.⁵⁵

Conclusion

Formal responsibility, capabilities and political will are three crucial aspects which all are in need of further consideration before a final stance can be taken on the role of regional organizations in the implementation of R2P. On the basis of the discussion in this report, three preliminary observations can be made as regards the potential of regional organizations in relation to R2P.

First, regional organizations are assigned a role in relation to R2P in the 2005 World Summit Outcome Document, which currently represents the 'official' and internationally endorsed version of R2P. The Outcome Document explicitly refers to regional organizations as prospective partners for the UN in the implementation of R2P, both by term and by reference to Chapter VIII of the UN charter. However, the Outcome Document clearly considers regional organizations first and foremost as partners of or sub-contractors under the UN in the context of R2P. In contrast, the 2001 advisory ICISS report opened for the possibility that regional organizations might act without prior authorization from the Security Council in cases where the latter is unable or unwilling to take action to protect populations from mass atrocities.

The international community's failures to take action in response to atrocities in the past are in themselves evidence that the present UN system, including the Security Council's role within it, is sub-optimal. On the other hand, opening the door for action by regional organizations without prior Security Council authorization would in all likelihood create more problems for R2P than it would resolve. Despite its deep-rooted institutional weaknesses, the UN remains the only proper forum for extensive international political dialogue and decision-making. Continued work for UN reform, as well as further consideration of alternative authorization structures *within* the UN system, would seem more fruitful than opening up for indistinct practices outside the UN system.

A second observation is that it is problematic to treat the wide range of existing regional organizations under the same collective term

⁵⁵ This has, for instance, been Sudanese President Omar Al-Bashir's stated reason for not wanting Western UN troops in Darfur.

when operationalizing the principle of R2P. If R2P is defined as broadly as it is in the Outcome Document, then practically all regional organizations today possess capabilities that could somehow enable them to take part in the implementation of R2P. However, their *de facto* potentials vary significantly. This needs to be recognized before further operationalizing the role of regional organizations in the context of R2P.

Finally, it is important to note that capabilities alone represent no guarantee for effective action. A key factor that both constitutes and constrains regional organizations' potential to play a role in implementing R2P is the willingness of their member states. In many cases, regional organizations are prevented from taking on protection tasks due to ineffective decision-making procedures or powerful member states blocking action on the basis of national concerns. And conversely, some states may be tempted to use R2P as a pretext or cover for taking action in pursuit of their own national agendas. While such practices are difficult to prevent, they can represent a real obstacle to regional organizations' potential to play a constructive role in the implementation of R2P.